

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

JOHNSON CONTROLS, INC.
Employer

and

16-RC-256972

SMART - SOUTHWEST GULF COAST
REGIONAL COUNCIL
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as raising no substantial issues warranting review.¹ The Employer's request for extraordinary relief is denied as moot.²

¹ In denying review, we note that the Board's decision in *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998), recognizes that Board elections should, as a general rule, be conducted manually and specifies well-settled guidelines for determining whether a mail-ballot election would normally be appropriate. But, in *San Diego Gas & Electric*, the Board also recognized that "there may be other relevant factors that the Regional Director may consider in making this decision" and that "extraordinary circumstances" could permit a Regional Director to exercise his or her discretion outside of the guidelines set forth in that decision. *Id.*

In finding that a mail-ballot election is warranted in this case, we rely on the extraordinary federal, state, and local government directives that have limited nonessential travel, required the closure of nonessential businesses, and resulted in a determination that the regional office charged with conducting this election should remain on mandatory telework. Mandatory telework in the regional office is based on the Agency's assessment of current Covid-19 pandemic conditions in the local area. Under all of the foregoing circumstances, we are satisfied that the Regional Director did not abuse his discretion in ordering a mail-ballot election here. In so finding, we do not rely on the Regional Director's citation to *Isbrandtsen Steamship Co., Inc.*, 51 NLRB 883, 885 (1943), or *Sitka Sound Seafoods*, 325 NLRB 685 (1998).

The Employer contends that the Regional Director breached the Board's procedures and due process requirements by not setting a location for the ballot count. We find no basis for this contention at this time, but the Employer retains the right to renew its contentions in connection with any request for review of any subsequent action taken in this case.

The Board is open to addressing the normal criteria for mail balloting in a future appropriate proceeding.

² We are treating the Employer's motions to stay the mail-ballot election and to proceed with manual election as a request for extraordinary relief under Sec. 102.67(j) of the Board's Rules and Regulations.

JOHN F. RING,

CHAIRMAN

MARVIN E. KAPLAN,

MEMBER

WILLIAM J. EMANUEL,

MEMBER

Dated, Washington, D.C., May 18, 2020